



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 22.10.2025

Order pronounced on : 21.11.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.Nos.5041 & 5044 of 2025
& CMP.Nos.25445 & 25451 of 2025

CRP.No.5041 of 2025:

1.Onkar Kanwar
2.Taru Kanwar

... Petitioners

Vs.

1.M/s.Shiva Texyan Ltd.,
No.56, North Boag Road,
T.Nagar, Chennai – 600 017
Represented by its Manager (Legal)
Mr.Muthuraman

*[Amended as per order dated
02.12.2016 in Application
Nos.5925 & 5926 of 2015]*

2.The Official Liquidator of
M/s.Apollo Tubes and Steel Industries Ltd.,
Attached to the High Court of Delhi,
Lok Nayak Bhavan,
8th Floor, Khan Market,
New Delhi – 110 003.

*[Amended as per order dated
02.12.2016 in Application*



Nos.5925 & 5926 of 2015]

A.P.Kanwar (Deceased)

Raunaq Singh (Deceased)

3.Promilka Kanwar

4.Githanjali Prashant

5.Vikrant Kumar

6.Sahil Kanwar

*[Defendant Nos.4 to 7 are
impleaded as per order dated
02.08.2006 in Application
No.2671 of 2002]*

Sardani Satwant Raunaq Singh (Deceased)

7.Rani

Surindar Kapur (Deceased)

... Respondents

*[Impleaded as per order dated
02.08.2006 in Application
No.2671 of 2002]*

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the impugned order dated 01.09.2025 passed by the Principal Commercial Court at Egmore, Chennai, in I.A.No.1 of 2025 in C.O.S.No.833 of 2022.

CRP.No.5044 of 2025:



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1.Promila Kanwar
2.Githanjali Prashant
3.Shahail Kanwar

... Petitioner

Vs.

1.M/s.Shiva Texyan Ltd.,
No.56, North Boag Road,
T.Nagar, Chennai – 600 017
Represented by its Manager (Legal)
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Raunaq Singh (Deceased)

3.Vikrant Kumar

4.Onkar Kanwar

5.Taru Kanwar

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6.Rani

Surindar Kapoor (Deceased)

*[Defendant Nos.8 to 12 impleaded
as per order dated 02.08.2006 in
Application No.2671 of 2002]*

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the order dated 01.09.2025 passed by the Principal Commercial Court at Egmore, Chennai, in I.A.No.2 of 2025 in C.O.S.No.833 of 2022.

For Petitioners : Mr.P.V.Balasubramaniam
Senior Counsel
for Mr.T.Poornam in both CRPs

For Respondents : Mr.Srinath Sridevan
Senior Counsel
for Mr.R.Ramasubramaniam Raja for R1
in both CRPs

COMMON ORDER

These revision petitions have been filed, challenging orders in I.A.No.1 of 2025 in C.O.S.No.833 of 2022 and I.A.No.2 of 2025 in the very same Commercial Suit on the file of the Principal Commercial Court, Egmore.



2.CRP.No.5041 of 2025 has been filed by the defendants 9 and 10 in the suit, whereas CRP.No.5044 of 2025 has been filed by the defendants 4, 5 and 7. The application in I.A.No.1 of 2025 was filed to condone the delay of 25 days in filing the petition to set aside the ex-parte decree in C.O.S.No.833 of 2022 and the application in I.A.No.2 of 2025 was filed by the defendants 4 to 7 was directly under Order IX Rule 13 of CPC to set aside the ex-parte decree dated 24.11.2023 in C.O.S.No.833 of 2022.

3.I have heard Mr.P.V.Balasubramaniam, learned Senior Counsel for Mr.T.Poornam, learned counsel for the petitioner and Mr.Srinath Sridevan, learned Senior Counsel for Mr.R.Ramasubramaniam Raja, learned counsel for the 1st respondent in both the revision petitions.

4.Mr.P.V.Balasubramaniam, learned Senior Counsel would submit that the suit was initially filed before the Original Side of this Court and in view of the change in pecuniary jurisdiction, the suit was transferred to the file of the City Civil Court and re-numbered as O.S.No.676 of 2021 and pending the suit before the City Civil Court, with the constitution of the Commercial Courts, the suit was transferred to the Commercial Court and

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renumbered as COS.No.833 of 2022. The learned Senior Counsel would further submit that at no point of time, there has been service of summons on the petitioners, despite the petitioners having entered appearance before this Court when the suit was pending in the Original Side. He would further state that the petitioners were entitled to notice when the suit was transferred to the City Civil Court and unless the petitioners were put on notice about the renumbering of the suit and the hearing date, it was not possible for the petitioners to enter appearance.

5.Mr.P.V.Balasubramaniam, learned Senior Counsel would also state that even when the suit was transferred to Commercial Court, applying the same analogy, he would contend that the petitioners ought to have been put on notice and admittedly even according to the Court records, the petitioners have not served at any point of time.

6.Additionally, Mr.P.V.Balasubramaniam, learned Senior Counsel would contend that the publication has been effected by the respondent-decree holder, without even an order being passed by the Court under Order V Rule 20 of CPC, directing publication to be effected. He would therefore



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contend that there is a material irregularity committed in the entire process of attempting to serve the revision petitioners and consequently, the Court ought to have condoned the delay insofar as CRP.No.5041 of 2025 and allowed the application to set aside the ex-parte insofar as CRP.No.5044 of 2025.

7.Mr.P.V.Balasubramaniam, learned Senior Counsel would further state that the petitioners got knowledge of the proceedings only when they received notice in the execution petition filed before the Delhi Courts and immediately, the applications have been taken out to recall the ex-parte decree passed in the Commercial Suit here. He would further state that the Commercial Court has, in fact, accepted the explanation of the revision petitioners, but however, ultimately, non-suited the petitioners only on the ground that they have not been able to substantiate the date of knowledge of the ex-parte decree.

8.In this regard, Mr.P.V.Balasubramaniam, learned Senior Counsel would invite my attention to the email communication dated 29.01.2025 filed by the revision petitioners, pointing out that the said email



communication was in fact exhibited before the Court in I.A.No.2 of 2025 and received by the Court on 30.07.2025 as well.

9.Taking me through the contents of the email communication, Mr.P.V.Balasubramaniam, learned Senior Counsel would submit that the respondent-decree holder had sent the email communication, referring to the execution petition filed before the Delhi High Court and also the same being filed in pursuance of the decree passed by this Court on 24.11.2023. The said email communication forms the basis of the claim of the revision petitioners with regard to the date of knowledge of the ex-parte decree. The learned Senior Counsel would therefore state that when the Commercial Court has not adverted its attention to the relevant material evidence produced by the petitioners and proceeded to erroneously render a finding that the petitioners have not been able to substantiate the date of knowledge. He would therefore state that the impugned order has to be necessarily set aside and an opportunity be given to the petitioners to contest the suit on merits. He would therefore pray for the revisions being allowed.



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10. Per contra, Mr. Srinath Sridevan, learned Senior Counsel appearing for the 1st respondent, decree holder would submit that insofar as CRP.No.5041 of 2025, he would contend that this revision applies to a different set of defendants, who have straight away challenged the dismissal of an application under Order IX Rule 13 of CPC. He would submit that the said order is appealable under Order 43(1) of CPC r/w Section 13(1) of the Commercial Courts Act and only a CMA would lie as against the rejection or dismissal of an application under Order IX Rule 13 of CPC. He would therefore state that the revision itself is not maintainable and the said revision has to be dismissed.

11. Coming to the other revision in CRP.No.5044 of 2025, it is the contention of Mr. Srinath Sridevan, learned Senior Counsel that the petitioners had sworn to an affidavit as if they never knew about even the institution of the suit in the first place and pointing to the fact that the petitioners had entered appearance through counsel even before this Court on the Original Side, where the suit was originally instituted, he would submit that the petitioners have filed a false affidavit and therefore they are not entitled to any indulgence.



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12.As regards the effecting of paper publication, without orders of the Court, Mr.Srinath Sridevan, learned Senior Counsel would submit that it is only an infirmity which can be corrected and has in fact been corrected since the plaintiff-decree holder has proceeded to cause publication in English Dailies, both in Chennai as well as New Delhi, where the petitioners are carrying on business and the paper publications that have been filed in proof of such effecting substituted service, have been accepted and acted upon by the Court and in such circumstances, he would submit that the infirmity cannot be held to be fatal or materially irregular, in order to enable the petitioners to have the ex-parte decree set aside. Mr.Srinath Sridevan, learned Senior Counsel would further state that even Order V Rule 20 of CPC does not contemplate an application to be filed, seeking permission of the Court for effecting publication and therefore, this cannot be a ground to set aside the ex-parte decree or to condone delay, when the petitioners themselves have failed to make out sufficient cause for their non appearance, especially, after having been served with summons and entered appearance before this Court.



13.Mr.Srinath Sridevan, learned Senior Counsel would further state that as diligent litigants, the petitioners ought to have followed up the case with their counsel and cannot plead that they were not aware of what all transpired for close to 25 years and he would therefore state that all this weighed in the mind of the Commercial Court in dismissing the applications filed by the revision petitioners. He would therefore pray for dismissal of both the revisions.

14.I have carefully considered the submissions advanced by the learned Senior Counsel on either side.

15.Though the petitioners have filed an affidavit, as if they never even knew about the very institution of the suit, across the bar it is fairly admitted by Mr.P.V.Balasubramaniam, learned Senior Counsel that summons were in fact originally served before this Court and some of the defendants have even chosen to enter appearance through counsel. It is also an admitted fact that pending the suit before this Court in the Original Side, on account of enhancement of pecuniary jurisdiction of the District Courts, the suit was transferred to the file of the City Civil Court and again, it has



been transferred to the Commercial Court and renumbered as C.O.S.No.833

16.It is not in dispute that service was effected on the revision petitioners only by way of publication. The relevant adjudications for deciding these revisions are as follows:

(i) On 21.10.2021, the VII Additional City Civil Court has listed the suit for the first time and has ordered notice to the parties and their counsel, returnable by 22.11.2021.

(ii) On 22.11.2021, a new counsel has undertook to file vakalat for the plaintiff. Court notice was ordered to the defendants side by 20.12.2021.

(iii) On 20.12.2021, the counsel who undertook to file vakalat for the plaintiff has entered appearance and the suit was adjourned to 27.01.2022, awaiting service on the defendants side.

(iv) On 27.01.2022, finding that the notice sent to the defendants was returned with an endorsement "left, no such person", the suit was adjourned to 01.03.2022 as service was pending.

(v) On 01.03.2022, the plaintiff was directed to serve private notice to the defendants, returnable by 28.03.2022.



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(vi) On 28.03.2022, the plaintiff was granted further time to effect private notice by 18.04.2022.

(vii) On 18.04.2022, private summons to the defendants were ordered returnable by 24.05.2022.

(viii) On 24.05.2022, noticing that the Commercial Courts were constituted on 23.04.2022, the entire records were indexed and sent to the Commercial Court and the counsel and the parties were directed to appear on 20.06.2022 before the Commercial Court on 26.06.2022.

(ix) Fresh summons to the defendants were ordered through Court and post, returnable by 22.08.2022.

(x) On 22.08.2022, finding that private notice was returned 'unserved', the Commercial Court directed steps to be taken for substituted service, returnable by 28.10.2022, with the next purpose as 'batta'. However, on 28.10.2022, the plaintiffs have filed affidavit of service, enclosing publications effected in both Chennai and Delhi editions and receiving the said publications, the defendants were called and set ex-parte and the suit was posted for recording ex-parte evidence on 28.11.2022.

Thus it is clear from the above that, at no point of time, there was any proper service of notice on any of the petitioners, before the City Civil Court as well as Commercial Court.



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17.As rightly contended by Mr.P.V.Balasubramaniam, learned Senior Counsel for the petitioners in both the revision petitions, even assuming the defendants had received summons and some of them had chosen to appear even before this Court, when the suit came to be transferred to the file of the City Civil Court and again to the Commercial Court, the petitioners were certainly entitled to notice, since otherwise they will not be in a position to even enter appearance in the absence of the correct number of the suit and also the hearing date.

18.In fact, the trial Court has accepted the reasons assigned by the revision petitioners in finding that once the petitioners were called and set ex-parte, only pursuant to paper publications being effected, it was open to the petitioners to plead date of knowledge, in order to have the delay condoned and also to set aside the ex-parte decree. The trial Court having rightly found that the reckoning date can be taken as the date of knowledge, proceeded to find that the petitioners have not produced any document to show that they got knowledge only on 22.01.2025 or later and on that ground alone, the petitioners have been non-suited.



19. In fact, at paragraph No.13, the Commercial Court specifically finds fault with the petitioners for not filing the emails through which they alleged to have got notice about execution proceedings, which constrained them to take out the applications, which are under challenge in these revisions.

20. On perusal of records, it is seen that the said email communication has in fact been filed by the revision petitioners and the same has also been received by the Court on 30.07.2025 as well. Without noticing the same, the Commercial Court has proceeded to render adverse findings and non-suited the petitioners only on the ground that no document was filed to substantiate the date of knowledge.

21. In view of the above, the findings of the trial Court that the petitioners have not established the date of knowledge is clearly perverse and contrary to record. Unfortunately, the Commercial Court has not considered the email communication filed by the petitioners, on which they bank on to claim that they had date of knowledge of the ex-parte decree only from the said e-mail. In the light of the above, when the Commercial



Court had accepted the reasons assigned to explain the reasons for non-appearance and the delay on that part in filing the application to set aside the ex-parte decree and proceeded to dismiss the application only on the ground of not substantiating the plea of date of knowledge, it is found contrary to the record available even before the Commercial Court. The petitioners are certainly entitled to the relief.

22. In fact, Mr.P.V.Balasubramaniam, learned Senior Counsel for the respondent would also rely on the decision of this Court in *V.Lakshmi Vs. R.Veerabathiran* in *CRP.[NPD].No.3854 of 2013* dated 04.02.2014, where this Court held that when summons had not been served on the defendants, the trial Court could not have passed an ex-parte decree and that the ex-parte decree was a material irregularity and illegal exercise of jurisdiction itself. This Court, in fact, held that such material irregularity could have been corrected, even when an application under Section 5 of the Limitation Act came to be filed, seeking condonation of delay in filing the application under Order IX Rule 13 of CPC. On this ground as well, the petitioners are entitled to succeed in the revision petitions. Even otherwise, when the procedure under Order V Rule 20 of CPC has not been followed and there



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has been publication effected in newspapers in Chennai edition as well as New Delhi edition, unilaterally by the respondent/decreed holder, the same would certainly also amount to a material irregularity, which goes to the root of the matter, thereby entitling the petitioners to have the ex-parte decree itself set aside.

23. In fact, at no point of time, the defendants were served with summons after transfer from this Court. It is seen from the above narration that even after the suit was transferred to City Civil Court, the defendants were not served with summons at any point of time and even when the suit was transferred to the Commercial Court as well, they were not served with any summons. In fact, all these have found favour with the Commercial Court itself and the petitions have been rejected only on the ground of failure of the petitioners to establish the date of knowledge of the ex-parte decree.

24. In fact, this Court in *Ellapuram Panchayat Union, Periapalayam Vs. Shri Bhavaniammal Devasthanam*, reported in 1981 (94) LW 256, held that whenever there is transfer of a case from one Court to the other, a



notice to that effect should be given to the parties informing them about the transfer, though no provision to such effect was found either under the Code of Civil Procedure or under the Civil Rules of Practice. This decision was followed by on other decision of this Court in *Dayanandhini Vs. K.Mala*, reported in *CMA.No.2460 of 2015* dated *14.02.2019*, where again, this Court held that notice was necessary, consequent to transfer of proceedings and also directed the Registry to circulate the judgment of this Court in *Ellapuram's case* (referred herein supra) to all Civil Courts, with instructions to issue notice to the parties on transfer of suits, on account of constitution of new Courts or bifurcation of jurisdiction or transfer of cases due to the change in pecuniary jurisdiction or territorial jurisdiction or even in the case of a transfer due to workload.

25. When the Court had only directed steps for substituted service, on its own accord, the respondent, plaintiff has chosen to cause publication in newspapers of his choice and has chosen to rely upon the same to have the defendants set ex-parte and consequently, have the suit also decreed exparte.



25. Order V Rule 20 of CPC reads as follows:

“20. Substituted service.—(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

1 [(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.]

(2) Effect of substituted service.—Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed.—Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.”

26. No doubt, as contended by Mr. Srinath Sridevan, learned Senior Counsel for the respondent, Order V Rule 20 of CPC does not contemplate an application to be taken out seeking permission to effect publication. However, in the present case, when the Commercial Court itself had directed the respondent-plaintiff to take steps under Order V Rule 20 of CPC, it was certainly incumbent upon the plaintiff to have filed an

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application for substituted service. As seen from the letter and spirit of Order XX Rule 20(1) of CPC, it clearly mandates the satisfaction of the Court that the Court believes the defendants are keeping out of the way and avoiding service or for some other reasons, the summons cannot be served in the ordinary way. In fact, Rule 1(a) also states that the Court which is ordering service by advertisement in newspaper shall ensure that the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain. The essence of Rule 20 is therefore that the Court has to permit advertisement in newspapers only upon satisfaction that the defendant is evading or avoiding service of summons in the suit. The orders passed by the Commercial Court do not indicate any such satisfaction as mandated under Rule 20(1) and no steps have also been taken pursuant to the order directing the plaintiff to take steps for substituted service and therefore merely because the respondent/plaintiff has effected advertisement in newspapers of the plaintiff's choice, it would not satisfy the requirement of Order V Rule 20 of CPC, in the absence of specific orders of the Court.



27. Even for this reason, effecting substituted service on the petitioners is materially irregular and therefore cannot be acted upon. When once it is seen that the publication itself has been taken out without any orders of the Court, pursuant to which alone, the petitioners have been set ex-parte and in the light of the petitioners also establishing that they had date of knowledge only from the email communication and a copy of which has also been filed before the Court, I see no reason why the petitioners should be non-suited.

28. Even though Mr. Srinath Sridevan, learned Senior Counsel would contend that insofar as CRP.No.5044 of 2025, the remedy available is only by way of appeal to challenge the ex-parte the decree, considering that the suit has been filed against all the defendants in COS.No.833 of 2022 and the decree as against the petitioners in CRP.No.5041 of 2025 and that the the suit being a commercial suit, the very object of expeditious disposal of commercial disputes has been undermined in the present case because of the lackadaisical attitude of the revision petitioners, I am unable to countenance the said attractive submissions of Mr. Srinath Sridevan, learned Senior Counsel for the simple reason that the suit was not filed as a commercial suit in the



first instance and it was filed as an ordinary money suit before the Original Side of this Court and subsequently, it was transferred to the file of the City Civil Court first and much later was taken up as a commercial suit in the year 2023. Therefore, I am unable to accept the argument of Mr.Srinath Sridevan, learned Senior Counsel that being a commercial suit, the petitioners are bound by the strict rigors of the time limits that are prescribed under the Commercial Courts Act.

29.In view of the findings above that there has been no service of summons on the revisoin petitioners after the suit was transferred to the City Civil Court and again when it was transferred to the Commercial Court and also there being irregular paper publication effected by the plaintiff, even though the order rejecting the application under Order IX Rule 13 of CPC is appealable and there is also the order in I.A.No.1 of 2025 which is under challenge in CRP.No.5041 of 2025 is only an application seeking condonation of delay, when the foundation of the ex-parte decree itself is found to be unilateral, causing of advertisement in newspapers of the choice of the respondent-plaintiff, this Court exercising power under Article 227 of Constitution of India is certainly entitled to correct such material



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irregularity and in order to avoid further delay, which would only cause prejudice and injustice to both parties, I am inclined to allow the revision petitions, with a direction to the Commercial Court, Egmore, to formally number the application under Order IX Rule 13 of CPC insofar as the defendants 9 and 10 are concerned and to allow the same and expedite disposal of the suit by adhering to the following time lines.

(i) Pleadings shall be completed by 28.11.2025.

(ii) Issues shall be framed by 05.12.2025.

(iii) The Commercial Court, Egmore, shall schedule the case management and ensure that the suit is disposed of within a period of six months from the date of the first case management hearing.

30. In fine, the Civil Revision Petitions are allowed. The orders dated 01.09.2025 passed by the Principal Commercial Court at Egmore, Chennai in I.A.Nos.1 & 2 of 2025 in C.O.S.No.833 of 2022, are set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.

21.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To

The Principal Commercial Court at Egmore, Chennai.

P.B. BALAJI,J.

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Pre-delivery order made in
CRP.Nos.5041 & 5044 of 2025
& CMP.Nos.25445 & 25451 of 2025

21.11.2025